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In re Application of	:	
KREMERS et al.	:	
Application No.: 09/890,503	:	DECISION ON PETITION
PCT No.: PCT/EP00/00479	:	
Int. Filing Date: 22 January 2000	:	UNDER 37 CFR 1.181
Priority Date: 01 February 1999	:	
Attorney Docket No.: 521.1004	:	
For: SELF-RECOVERING CURRENT-LIMITING	:	
DEVICE WITH LIQUID METAL	:	

This is a decision on applicants' "Petition Under 37 CFR 1.181 to Withdraw the Holding of Abandonment" filed in the United States Patent and Trademark Office (USPTO) in the above referenced application on 27 November 2002. No petition fee is required.

BACKGROUND

On 13 September 2001, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) and the surcharge for filing the oath or declaration after the thirty month period were required. A two month period of time was set to respond to the Notification with extensions of time available under 37 CFR 1.136(a).

On 13 November 2002, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to applicants indicating that applicants had failed to respond to said Notification of Missing Requirements within the time period set forth.

Applicant submitted the instant petition under 37 CFR 1.181 on 27 November 2002, requesting withdrawal of the holding of abandonment. Applicant provided a copy of the executed declaration allegedly deposited on 02 November 2001 and allegedly received in the USPTO on 04 February 2002 along with a itemized postcard receipt date-stamped 04 February 2002. However, the declaration is not itemized on the USPTO date-stamped post card receipt.

DISCUSSION

In his 27 November 2002 submission, applicant alleges that he originally mailed an executed declaration on 02 November 2001 and submits a postcard receipt date-stamped by the USPTO "04 February 2002". A review of the finance records for this application indicates that the \$130 surcharge was paid on 04 February 2002. However, the original declaration is not found in the application file. Applicant filed a copy of the alleged earlier filed declaration with his petition. It is noted that the copy of the postcard receipt date-stamped 04 February 2002 does not indicate that the executed declaration was filed but that a 2 page assignment was submitted.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon, on the date stamped thereon by the USPTO. In the instant case, the records of the Office (e.g., the file of the application) do not contain the declaration allegedly submitted by applicant on 04 February 2002. The Office will rely upon its official record of the contents of such correspondence in absence of convincing evidence (e.g., a postcard receipt under MPEP § 503 containing specific itemization of the document(s) or fee(s) purported to have been filed with the correspondence at issue) that the Office received and misplaced these documents that are not among the official records of the Office. See MPEP §503, p.500-14.

Without proof of the submission of an executed declaration, the application must be considered abandoned for failure to timely respond to the Notification of Missing Requirements. In requesting withdrawal of the abandonment of the application, applicant must file a renewed petition under 37 CFR 1.181 and provide a true copy of the USPTO date-stamped itemized postcard receipt indicating the filing of the *declaration*. Applicant has not explained how post card receipt submitted with the petition is proof that the *declaration* was submitted on 04 February 2002.

The evidence submitted is insufficient to establish that the declaration for this application was received in the USPTO on 04 February 2002. Accordingly, it is inappropriate to withdraw the holding of abandonment at this time, without proof that the declaration with a deposit date of 04 February 2002 was filed.

CONCLUSION

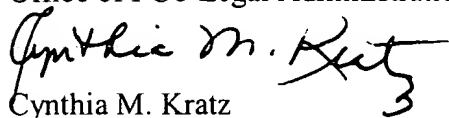
For the reasons stated above, the petition under 37 CFR 1.181 is **DISMISSED WITHOUT PREJUDICE**.

The application remains **ABANDONED**.

Any reconsideration on the merits of this petition should be entitled "Renewed Petition under 37 CFR 1.181".

Applicant is advised that, effective May 1, 2003, the Office is changing its correspondence address. Any further correspondence with respect to this matter deposited with the United States Postal Service on or after May 1, 2003 should be addressed to the Mail Stop

PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450,
Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the
Office of PCT Legal Administration.

A handwritten signature in black ink, appearing to read "Cynthia M. Kratz", with a stylized flourish at the end.

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